Supreme Court, U.S.
FILED

NO. 931165 JAN 13 1994

OFFICE OF THE CLERK

IN THE SUPREME COURT
of the UNITED STATES of AMERICA
JANUARY TERM, 1994

GEORGE P. PERSICO and ANN MARIE PERSICO,
Petitioners

v.

MAYOR VILLA, PERSONALLY and as
MAYOR of the CITY of AMSTERDAM,
Respondents

PETITION for WRIT of CERTIORARI to the UNITED STATES COURT of APPEALS for the SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

George P. Persico, Petitioner pro se
1454 Strada d' Argento
Venice, Florida 34292
(813)484-8752

35 pp

QUESTIONS PRESENTED FOR REVIEW

1. Was the U.S. District Court, Northern District of New York in error in entering Summary Judgment based on falsified proof submitted by Defendant's counsel.

LIST OF PARTIES

The parties to the proceedings below were Petitioners, George & Ann Marie Persico. Respondent, Mario Villa, Personally and as Mayor of the City of Amsterdam was defendant - appelle below.

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(5th Ed.) (1978), pg. 424 - 429

See, e. g. R. Posner, The Federal Courts
(1985), pg. 120 - 126

Emergency Beacon Corporation, Monteo, Inc.,
V. Harvey S. Barr, 666 F. 2d 754
(2nd Circuit, 1981) pg.759-600

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(2nd Circuit,1963) pg. 542

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Rule 60 (b) (6) FRCP

Section 75, Civil Service Law

Judicial Councils Reform and Judicial Conduct
and Disability Act, 28 USC Section 372(c)

42 USC & 1983 Section 1, Free Speech Exercise,
42 USCA, 1983, Brown V.Brienen, C.A.
111, 1983, 722 F 2d 360

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45 AM Jur 2d.

IN THE SUPREME COURT
OF THE UNITED STATES
January Term, 1994

George and Ann Marie Persico
Petitioners

vs.

Mario Villa, Personally and as
Mayor of the City of Amsterdam,
Respondents

PETITION FOR A WRIT OF CERTORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

OPINIONS BELOW

Petitioners respectfully request that a Writ of Certiorari issue to review the Judgment Order of the United States Court of Appeals for the Second Circuit on October 16, 1993. Review of the docket entry schedule and transcript of the Summary Judgment hearing in the lower court. Review of the U. S. District Court proceedings. Review of the Charge of Judicial Misconduct 92-8525. All are set forth in full in the Appendix at pages 11-28 of this Petition.

STATEMENT OF JURISDICTION

United States Court of Appeals, Second Circuit this honorable court had jurisdiction to hear this matter under Title 28, U.S.C. Section 1331 and 42 U.S.C. Section 1983.

CONSTITUTION AND STATUTORY PROVISIONS INVOLVED

1. The rights, privileges and immunities sought to be redressed are the right to Free Speech secured by the First Amendment of the United States Constitution and the rights secured by the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the U.S. Constitution. Petitioner's rights pursuant to the Judicial Councils Reform and Judicial Conduct and Disability Act, 28 U.S.C. Section 373 (c).

2. Section 75 Civil Service Law.

STATEMENT OF THE CASE

On November 19, 1990 the U.S. District Court, NDNY granted defendants' motion for summary judgment and dismissed Petitioner's complaint. Judgment was entered on November 21,1990. Petitioner then discharged their trial court attorney.

Petitioner undertook to prepare and file post-judgment motions in the nature of a motion for reconsideration under F.R.C.P. Rule 60 (b) (3), & (b) (6) and Rule 61. A motion for amendment of judgment under Rule 59. All motions were denied.

In so doing, Petitioner sought the advice of the docket clerk, in the U.S. District Court, NDNY Kristine Merghantheler. Petitioner's were assured the filing of post-judgment motions was tolling the time for filing the Notice of Appeal as to the adverse summary judgment.

On April 8, 1991 Petitioner filed a motion pursuant to F.RC.P. Rule 60 (b) (3) which was denied by the trial court on June 17, 1991. This motion was appealed to the U. S. Court of Appeals, Second Circuit on June 24, 1991. An order denying this motion was issued January24, 1992.

On August 10,1992 Petitioner appeared before Judge Mc Avoy in the USDC, NDNY under motion F.R.C.P. Rule 60 (b) (6) and offered documentation evidencing tainted proof and evidentary support of altered civil service records were presented as " Exhibits " to Judge Mc Avoy. On October 17, 1992 Judge Mc Avoy USDC, NDNY denied motion and imposed sanctions in the amount of $ 100.00 against Petitioner pursuant to Rule 11.

During the conduct of oral argument before the U.S. Court of Appeals, Second Circuit on December 11,1991 evidentary support of altered employment records were presented to the panel as " Exhibits " . Petitioner's were informed by Presiding Judge, Hon. Jon O. Newman, that the appellate court considered the scope of the appeal to be limited to the denial of the motion for relief under F. R. C. P. Rule 60 (b) (3) and Rule 60 (b) (6) and that the Second Circuit court would not consider an appeal of the summary judgment itself.

The U.S.C.A. Second Circuit order dated October 18, 1993 denied Rule 60 (b)(6) and now denied all further motions in the lower court.

ARGUMENT FOR GRANTING WRIT

Petitioner considers Constitutional and Federal Rights impared and violated were he not granted and entitled to equal enforcement of local rules 10e, Rule 11 and Rule 56 of the Federal Rules of Civil Procedure and local rules of the U. S. District before Judge Mc Avoy.

POINT I

Due to the falsification of employment records by unknown parties, the submission of such falsified documents to the trial court, counsel for defendant Mayor Villa was able to pursuade the lower court judge that Petitioner's employment position expired naturally with the passage of appropriate time. The summary judgment was grounded in false proof and must be reversed.

A QUESTION OF FACT EXISTS CONCERNING THE VALIDITY OF DEFENDANTS SUPPORTING DOCUMENTS SUBMITTED THE THE LOWER COURT.

POINT II

Petitioner appropriately seeks normal adjudication " related to the merits " of case No.89 - CV - 599 within the meaning of section (c)(3)(A)(ii),, whether or not it has already been the subject of a judicial ruling.

See In reCharge of Judicial Misconduct 685 F. 2d 1226 (9th Cir 1982)

POINT III

The application of Rule 60 (b) (6) of the F.R.C.P. has been a focus of a number of cases heard before the U.S. Circuit Court of Appeal. Consistent throughout this line of cases is the view of Rule 60 (b)(6) as a mechanism for the trial court's implementation of it's inherent equitable powers to ensure that, among other things, blind adherence to procedure does not deny litigants substantive justice, ie. justice is the ultimate goal of our judicial system.

This reasoning was reinforced by the Second Circuit U.S. Court of Appeals in case of EMERGENCY BEACON CORPORATION, MONTEO, INC., V. HARVEY S.BARR,666 F. 2d 754 (2nd Circuit, 1981), wherein the Court held

This portion of Rule 60(b) is properly invoked when there are extraordinary circumstances,... or where the judgment may work an exteme hardship,.. A motion under Rule 60(b) is adressed to the sound discretion of the Trial Court and this discretion "is especially broad under subdivision(6), becuase relief under it is to granted when" appropriate to accomplish justice'."(citations omitted) Id, at pp.759-60

This reasoning was echoed in the prior Second Circuit decision in the case of

RADACK, V. NORWEGIAN AMERICA LINE AGENCY, INC. 318 F. 2d 538, 542 (2nd Circuit, 1963).

This catch-all clause in Rule 60 gives the District Court a "grand reservoir of equitable power to do justice in a particular case." id, at p. 542.

The cases cited in an interpretation of F.R.C.P. Rule 60 (b) (6) clearly indicate the posture of the Second Circuit to regard the rule as a means for the trial court to redress injustice resulting from conditions created by someone other than the moving party. This is clearly the situation present in this case. As a direct result of the justified reliance of Petitioner upon the advice of the Docket Clerk, Plaintiff-Petitioner's Notice of Appeal was accepted only for the narrow purpose of review of the denial of a Motion for Relief under F.R.C.P. Rule 60 (b) (3). As such, the summary judgment itself was never reviewed at the Appellate level.

Based upon the foregoing, justice by equitable principles impose a duty to return this case to the lower court.

CONCLUSION

On account of the conditions that existed in the trial court, as described previously in the Petition for Writ of Certiorari, the summary judgment entered in favor of defendant Villa and against Petitioner was improper as a matter of law. This Honorable Court's interest in a full and fair administration of justice dicates that entry of summary judgment not be based on tainted proof.

Petitioner respectfully requests the summary judgment entered below be reversed and the case remanded to the trial court for the conduct of further proceedings.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

GEORGE PERSICO and ANN MARIE PERSICO

Plaintiffs,

- against -

MARIO VILLA, personally and as Mayor of the City of Amsterdam,

Defendant.

89-cv-599

APPEARANCES
GEORGE PERSICO
ANN MARIE PERSICO pro se
1454 Strada d' Argento
Venice, Florida 34292
Plaintiffs

HORIGAN,HORIGAN LAW FIRM
P.O. BOX 520
49 E. Main Street John Pennock,Jr.
Amsterdam, New York 12010
For defendant,Villa

ORDER

On November 19, 1990 this court granted the defendant's motion for summary judgment and dismissed plaintiffs' complaint. Judgment was entered on November 21, 1990. On April 8, 1991 plaintiffs' filed a motion pursuant to Fed. R. Civ.P. 60(b) which was denied by the court on June 17, 1991.

Plaintiffs' appealed this decision to the United States Court of Appeals for the Second Circuit on June 24, 1991. In an order issued on January 24, 1992 the Second Circuit affirmed the order of this court denying plaintiffs' motion pursuant to Fed. R.Civ.P.60 (b).

Plaintiffs now seek, once again, to set aside the judgment pursuant to Fed.R.Civ.P. 60 (b). Defendant opposes this motion as frivolous and untimely,and requests that monetary sanctionsbe imposed against plaintiffs for making such a motion. The court finds that the instant motion is untimely and baseless considering the history of this case. Not only has this court ruled on plaintiffs' motion to set aside the judgment, but the Court of Appeals has affirmed that decision.

Therefore, the court hereby denies plaintiffs' motion and imposes sanctions in the amount of $ 100.00 against plaintiffs pursuant to Fed.R.Civ.P.11.

It IS SO ORDERED.

Dated at Albany, New York October 17,1992

Thomas J. McAvoy
United States District Judge

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF NEW YORK

PRESENT: HON. THOMAS J. Mc AVOY

JUDGE.

- - - - - - - - -

GEORGE PERSICO and ANN MARIE PERSICO
Plaintiffs,

- against -

MARIO VILLA, PERSONALLY AND AS MAYOR
OF THE CITY OF AMSTERDAM, ET AL,
Defendants.

Civil No. 89-CV-599

- - - - - - - - -

A motion held at the Federal

Building, Utica, New York, on the

13th day of November, 1990.

Reporter: Vicki A. Theleman,RPR
Official Court Reporter
15 Henry Street
Binghamton,New York 13901
607-773-2644

APPEARANCES: Frost, Donohue, Becher
Plaintiff: Brian Donohue, Esq. of Counsel
Defendant: Horigan, Horigan Law Firm
John H. Pennock, Esq. of
Counsel

Transcript of Summary Judgment

THE CLERK: George and Ann Marie Persico versus Mario Villa, et al, 89-cv-599. May I have the appearances for the record, please?

MR. PENNOCK: John Pennock for defendant, Mario Villa.

MR. DONOHUE: Brian Donohue. I'm appearing for Frost & Donohue. I should indicate that until approximately two months ago the firm was Frost,Donohue & Becher. Actually Mr. Becher has continued to handle this case, but on Saturday his best friend, who happened to be a Troy attorney, died suddenly. He's a pall bearer at the funeral today. So I'm appearing for Mr.Becher.

THE COURT: Before we get into the matter, you know the Court's thoroughly familiar with this.

THE COURT: I took the file home over the weekend, I read through everything again. and I think I know what the problems in the case are. You know,Mr. Donohue, Mr. Becher submitted opposition papers on Friday. I got them at quarter of 5 Friday afternoon. They were faxed, which is not in compliance with our rules. They were totally untimely. And they weren't signed. So the court doesn't really have any opposition papers in front of it. What can I do about that ? Am I supposed to just ignore that, say well, okay, well the firm split up,quarter of 5 last Friday I got these unsigned fax papers, everything's okay ? I'll listen listen to your to your argument and treat it just like ann attorney who complies with all the rules ? Should I do that ? I know it's not your fault. I realize that. You are a good lawyer, I know that.

MR.DONOHUE: Your Honor, I appreciate your Honor saying that. The firm is still the firm of record, so I suppose I do have to take some responsibility. I frankly don't know why, your Honor, why Mr. Becher couldn't submit the papers in a timely fashion other than the fact that the usual confusion engendered when a firm splits up did cause problems.

THE COURT: Mr. Pennock.

MR.PENNOCK: Well,your Honor, I also received the papers by fax on Friday. I did talk to Mr. Becher. Given the circumstances he presented, I said I would not oppose it if he wanted to make the application to allow this-- or ask this court for permission to submit them late. I wouldn't stand in the way of that and leave it to the Court's discretion, I would much rather receive a judgment, if I'm to receive one, on the merits, if possible.

MR.PENNOCK: I know there was a supplemental affidavit that Brian showed to me this morning which Mr. Persico apparently prepared himself. I have rejected that one. I don't know if that's before the Court or not.

Did you present that to the Court ?

MR. DONOHUE: Well, at this time, your Honor, I will present that - and that is absolutely correct, that Mr. Pennock did reject that so-called addendum. Given his courtesies here, I really can't argue, your Honor, that we should ask that it be considered.

THE COURT: Well, all right.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

- - - - - - - X

GEORGE and ANN MARIE PERSICO,
Plaintiffs-Appellants,

V.

MARIO VILLA, Personally and as
Mayor of THE CITY OF AMSTERDAM,
Defendant-Appellee.

- - - - - - - X

U S C A Docket 91-7628

U.S. Courthouse, Foley Square
New York, New York

December 11, 1991 10:15 a.m.

Before:

HON. JON O. NEWMAN, Presiding Judge

HON. RICHARD J. CARDAMONE
HON. WILFRED FEINBERG, Circuit Judge

APPEARANCES

GEORGE PERSICO, Appearing pro se

HORIGAN, HORIGAN PENNOCK & LOMBARDO, P.C.
Attorneys for Defendant-Appellee
JOHN H. PENNOCK, JR.

JUDGE NEWMAN: You seem to be talking as if the only thing we should look at is whether there was any error committed the first time.
MR.PERSICO: Clearly-- I will outline the issues-- clearly the standard was not met in the District Court that there were genuine issues of material fact present, and it will become clear and I'll refer to exhibits. The issues in this case are that the employment records of plaintiff George Persico were fraudulently altered in a patent effort to establish after the fact that plaintiff George Persic's employment was temporary and that proper grounds existed for his dismissal.

Defendant's counsel submitted an altered version and unsigned copy of certain employment records of George Persico in support of defendant's motion for summary judgment. The altered document was falsified by unknown parties.

MR. PERSICO:

And with respect to the opposing counsel, I do not contend that they had prior knowledge of this.

Therefore, the trial court judge, Judge Mc Avoy, based his entry of summary judgment in favor of defendant Villa at least in part on false proof. Appellants could not have reasonably anticipated that Mario Villa's counsel would submit such proof in support of their summary judgment motion to the District Court.

First and most noticeably, an issue of fact esisted regarding the status of my employment with the City of Amsterdam in terms of duration,whether I was permenant or temporary.

The altered documents submitted by defendants counsel, were false and misleading, creating an illusion that my employment had been temporary, whereas the authentic documents demonstrate to the contrary.

Mr.PERSICO:

Secondly, an issue of material fact existed before the trial court concerning whether I was dismissed by the City of Amsterdam for disciplinary reasons or whether I was dismissed for inappropriate or unlawful reasons, including my announced intention to seek local political office. Also present in this case are serious questions concerning the effectiveness of plaintiff's counsel at the trial court level.

line 12 page 5 MR.PERSICO:

Futhermore; the transcript reveals that the attorney who actually appeared misrepresented to the Court information that was previously given to his clients George & Ann Marie Persico. And if I may have permission Id just like to show you the exhibits of altered documents.

Page 6

line 3 MR. PERSICO:

I have two employment records that I'll refer to as report of personnel changes. They are civil service records. You'll note one is signed in my brief on pages 6 & 7 of the reply brief. One is signed; one is unsigned. The one unsigned was submitted by defendant's counsel in his summary judgment motion.

line 12 MR PERSICO:

One is greenskeeper, one is a Superintendent of the Golf Course. They have different pay rates. They have different job discriptions. And also the employee was not given his wartime veteran credit which was earned and it was denied.

Line 22 & 23 MR PERSICO:

Judge Mc Avoy entered the wrong job titles.

JUDGE NEWMAN: All right. I think we understand you.

CIVIL DOCKET SHEET

United States District Court,
Northern District of New York

Judge Mc Avoy Case 89-CV-599

DATE 1989	NR	PROCEEDINGS
May 11	1	Complaint, issued summons ,svc.
Aug 21	4	Stipulation Extending time for Defts. to appear TJM 8/21/89
Oct 06	5	LETTER to counsel requesting Entry of Default, Deft ans. to 9-29-89 TJM d. 10/12/89
Oct 16	7	Answer Deft. (UNSIGNED) City of Amsterdam

Dec 12 (not listed) Rule 16 Conference: Atty Becher states that Pltf will be letting Deft. City out of action. If documents produces by Deft Villa substantiate the Pltf. dismissal, atty Becher will either dismiss the complaint or withdraw as counsel. Rule 16 stipulation handed up. Appearances: Robert Becher for Pltf; Pennock for Deft Villa; Richard Sise for Deft City.

May 10 13 FINAL PRETRIAL CONFERENCE

Discovery Closed as of 7-31-90; Motions 8-31-90; TRIAL READY as of 9-15-90. Clerk to issue Final Pretrial Order. Appearances (by phone) Robert Becher for Pltf. John Pennock for Deft.

Aug 17 15 COURT NOTICE re: TRIAL SCHEDULED For: September 17, 1990 at 10:00 A.M. in Binghamton, New York; PT papers to be filed in accordance w.FPT Order dated 5-10-90

-continued on Page 2-

Filed Dec 30,1992

JUDICIAL COUNCIL OF THE SECOND CIRCUIT

- - - - - - - - X

In re

CHARGE OF JUDICIAL MISCONDUCT 92-8525

- - - - - - - - X

THOMAS J. MESKILL,Chief Judge:

On November 19, 1992, complainant filed a complaint with the Clerk's Office pursuant to the Judicial Councils Reform and Judicial Conduct and Disability Act, 28 U.S.C. S.372c (the Act) and the Rules of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers (the Local Rules), charging a district court judge of this circuit with misconduct.

Complaint, the plaintiff in a lawsuit before the judge, accuses the judge of having 1) " deliberately or with reckless disregard for accuracy' improperly allowed(an attorney) to proceed with motion papers which were unsigned and untimely;" 2) engaged in " conduct contrary to the Federal Rules of Civil Procedure" and in fundamental distortions and misrepresentations of local rule 10e and rule 11 (')' by allowing a law firm not to comply with the rules;

3) " 'deliberately or with reckless disregard for accuracy'omitted material evidence and cited incorrect job titles, and wrongfully denied Complainant's war time service credit;" and 40 deprived complainant of his rights, privileges, and immunities" as provided by the Federal Rules of Civil Procedure and the district court's local rules.

To the extent complainant alleges that the judge permitted an attorney and his law firm to disregard the F.R.C.P. and the court's local rules, complainant raises a matters that may be raised within the proceedings. The Act does not apply to matters " directly related to the merits of a decision or procedural ruling," 28 U.S.C. S.372c,3,A, ii. If what is sought is appropriately obtained by normal adjudicition rather that by a misconduct complaint, such matter is " related to the merits " within the meaning of 28 U.S.C. Section 372(c)(3)(A)(ii),

whether or not it has already been the subject of a judicial ruling. See In re Charge of Judicial Misconduct, 685 F.2d. 1226(9th Cir. 1982) These portions of the complaint are hereby dismissed as directly related to the merits pursuant to 28 U.S.C. S. 372(c) (3) (A) (ii) and Rule 4 (c) (2) of the local rules.

In so far as complainant alleges that the Judge disregarded,omitted or gave insufficient weight to certain evidence, complainant raises a matter that is directly related to the merits of a judicial determination. Accordingly, this portion of the complaint is hereby dismissed as directly related to the merits pursuant to 28 U.S.C. S. 372 (c) (3) (A) (ii) and Rule 4 (c)(2) of the local rules.

In support of the claim that the judge deprived complainant of his rights under

the Federal Rules of Civil Procedure or the district court's policy of imposing fees on unauthorized Fax transmission received by the court. While this policy was adopted by judicial order it is not evidence of judicial misconduct. This portion of the complaint is hereby dismissed for failure to allege misconduct pursuant to 28 U.S.C. S 372(c)(3)(A) (1) and Rule 4 (c) (4) of Local Rules.

Accordingly, the complaint is hereby dismissed in it's entirety. The Clerk is directed to transmit copies of this order to the complainant and to the judge who is subject of the complaint.

THOMAS J. MESKILL
Chief Judge

Dated: New York, New York
December 21, 1992

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

89-cv-599

At a stated term of the United States Court Of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 18th day of October, 1993.

PRESENT: HON. HON O. NEWMAN, Chief Judge

HON. AMALYA L. KEARSE, Circuit Judge

HON. CHARLES H. TENNEY, District Judge. *

- - - - - - - - - - - - - - - - - -

GEORGE PERSICO and ANN MARIE PERSICO,
Plaintiffs-Appellants,

v.

93-7070

MARIO VILLA, PERSONALLY AND AS MAYOR OF THE CITY OF AMSTERDAM,
Defendant-Appellee.

- - - - - - - - - - - - - - - - - -

ORDER

Appeal from the United States District Court for the Northern District of New York (Thomas J. Mc Avoy, Judge).

This cause came on to be heard on the transcript of record from the United States District Court for the Northern District of New York and was submitted.

ON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that a order of the District Court be and it hereby is AFFIRMED:

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* Of the United States District Court for the Southern District of New York, sitting by designation.

Persico v. Villa
Docket No. 93-7070

George and Ann Marie Persico appeal pro se from the October 19, 1992, order of the District Court, denying their second Rule 60 (b) motion to obtain relief from the November 21, 1990, judgment dismissing their complaint. The original suit claimed that George Persico was discharged from his position as greenskeeper for a municipal course for political reasons.

On May 16, 1991, this Court dismissed as untimely an appeal from the original judgment, and on December 12, 1991, affirmed the District's Court order of June 17, 1991, denying the Persico's first Rule 60 (b) motion. The pending motion was properly denied, as well within the discretion of the District Court. To the extent that the appellants are alleging what they claim is justification for the untimeliness of their original notice of appeal, they are claiming excusable neglect, a ground that must be asserted under Rule 60 (b) (1) within one year.

See In re Cosmopolitan Aviation Corp., 763 F. 2d 507, 514 (2ndCir.), cert. denied, 474 U.S. 1032 (1985). The current motion was filed a year and one-half after the District Court's judgment.

The District Court imposed a modest sanction of $100.00 under Federal Rules of Civil Procedure 11. That sanction, which could well have been imposed in a higher amount, was entirely justified.

We affirm the denial of the Rule 60(b) motion and the imposition of the Rule 11 sanction, and we deny all pending motions in this court. Though we deny the appellee's request for imposition of appellate sanctions, the Persico's are cautioned that any further efforts to pursue their dispute with the appellee will expose them to the distinct risk of substantial sanctions, including personal liability for extra damages.

UNITED STATES DISTRICT COURT
Office of the Clerk
Northern District of New York
15 Henry Street
BINGHAMPTON, NEW YORK 13901

October 6,1989

JEROME K. FROST : ESQ
FOR PLAINTIFF George Persico

Re: PERSICO, et al -vs-
THE CITY OF AMSTERDAM

Case No. 89-cv-599

Dear Sir/Madam:

In reviewing the Court's docket on the above entitled action, we note that service of the summons and complaint was completed on May 24,1989, upon defendant, City of Amsterdam. The Stipulation extending time for defendants to answer until August 31, 1989 has expired. Our records further indicate that the defendants time to answer has expired. Accordingly you should request the entry of default by the Clerk of the Court at this time, as to defendant City of Amsterdam- only. Please also include a copy of the request with a self addressed post paid envelope for service back upon your office.
Following the entry of default by the Clerk you should move for default judgment pursuant to Rule 55 (b) within 30 days. Please attach a copy of the entry of default to your moving papers.

J.R. SCULLY, CLERK

DEPUTY CLERK